

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 283 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHARITY COMMISSIONER

Versus

DEITY OF SHREENATHJI,

Appearance:

MR S.T.MEHTA,AGP for Petitioner

MR ARUN H MEHTA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 1

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ORAL JUDGEMENT

1. The Charity Commissioner of the State of Gujarat has filed this appeal challenging the judgment and order dated 28.7.1980 passed in Civil Misc. Application No. 10 of 1979 by the learned District Judge, Jamnagar allowing the said application, by setting aside the order passed by the Joint Charity Commissioner dated 8.12.1978 and confirming the order passed by the Assistant Charity Commissioner, Rajkot dated 4.3.1978 by holding and declaring that Jamkhambhalia Bethak falls within the purview of Rajasthan Nathdwara Temple Act (Act No. 13 of 1959) and that the same is not required to be registered under the provisions of Bombay Public Trusts Act, 1950. It was further declared that the Samagri Fund duly

registered under the Bombay Public Trusts Act, 1950 at Bombay is entirely a separate trust and, therefore, its amalgamation with the main trust or the formation of common scheme is neither legal nor feasible.

2. The facts stated in the judgment may be summarised as under:

There is a place of public worship situated at Khambhalia town in the District of Jamnagar which is known as "Shri Mahaprabhuji Bethak". It appears that one Mukhiyaji Vrajdas Gokaldas, the present respondent no.2 (now deleted) submitted an application under section 18 of the Bombay Public Trusts Act on 30.10.1961, registered as Application No. 6037 of 1961, describing himself as Mukhiyaji of the trust. This application so submitted by Vrajdas was objected by the present respondent no.1 (hereinafter referred to as the "Nathdwara Temple Board") on the ground that the aforesaid place of worship belongs to the deity of Shreenathji at Nathdwara in Rajasthan State and it was governed under the Rajasthan Nathdwara Temple Board Act, 1959 and, therefore, it is not liable to be registered under the provisions of Bombay Public Trusts Act. During the proceedings before the Assistant Charity Commissioner, one Kalulal working as Bhandari of the Porbandar Bethak also appeared on behalf of Nathdwara Temple Board and filed a statement on behalf of the Board on 17.4.1967. One Tapubhai who used to work as a Munim either in the said Bethak at Khambhalia or in respect of one another trust, namely Samagri Trust Fund had also appeared and his statement was recorded. The Deputy Charity Commissioner, placing reliance mainly upon the evidence of Kalulal and Tapubhai, came to the conclusion that the public place of worship known as Maha Prabhuji Bethak is a public trust and, therefore, by his order dated 13.9.1967 ordered that the said trust should be registered under the provisions of Bombay Public Trusts Act, 1950. While coming to the said conclusion, finding is recorded by the Deputy Charity Commissioner that the Bethak did not belong to Nathdwara Temple Board and that the Samagri Trust Fund was also not again with the Board because it was registered under the Bombay Public Trusts Act, 1950. Against the said decision, Nathdwara Temple Board preferred an appeal being Appeal No. 135 of 1967 before the Charity Commissioner. The Charity Commissioner rejected the said appeal.

3. It appears that sometime in the year 1975, Nathdwara Temple Board filed a petition being Special Civil Application No. 113 of 1975 before this Court. This Court, by its order dated 7.4.1976

(Coram:P.D.Desai,J.) allowed the said Special Civil Application and set aside the order passed by the lower authorities on the ground that though the Nathdwara Temple Board was virtually interested in the Bethak at Khambhalia, reasonable opportunity of being heard was not afforded to them. In light of this order, the matter came to be remanded to the Assistant Charity Commissioner, Rajkot. The Assistant Charity Commissioner, Rajkot, after issuing notice to Vrajdas Kalulal and Nathdwara Temple Board, rejected the contention raised by Nathdwara Temple Board by its judgment and order dated 4.3.1978. Against the said decision, Nathdwara Temple Board preferred an appeal being Appeal No. 14 of 1978 before the Charity Commissioner. The learned Joint Charity Commissioner, by his judgment and order dated 8.12.1978, dismissed the appeal and came to the conclusion that the Bethak of Maha Prabhuji situated at Khambhalia does not belong to Nathdwara Temple Board; it was a distinct trust and, therefore, the provisions of Bombay Public Trusts Act, 1950 were applicable to it so far as the fund known as Samagri Fund was concerned. A finding was recorded that the Samagri Fund was already registered at Bombay under a distinct trust and, therefore, Maha Prabhuji Bethak Trust and Samagri Fund Trust at Bombay should be amalgamated and the common scheme for the management of both the trusts, should be formed. Nathdwara Temple Board preferred an appeal challenging the said order under section 72 of the Bombay Public Trusts Act by filing Civil Misc. Application No. 10 of 1979 before the District Court, Jamnagar. As stated above, the learned District Judge, Jamnagar allowed the said application by his judgment and order dated 20.7.1980 and set aside the order passed by the Joint Charity Commissioner as well as the Assistant Charity Commissioner. Hence the present appeal.

4. Mr.S.T.Mehta, learned AGP has submitted that Maha Prabhuji Bethak at Jamkhambhalia is an independent and distinct trust and not a part and parcel of Shreenathji temple of Nathdwara. Mr. Mehta further submitted that the Samagri Fund held in connection with the temple has been registered at Bombay and Nathdwara Temple Board had never expressed its dissatisfaction about the separate registration of Samagri Fund. By inviting my attention to the statement of Kalulal, Mr. Mehta submitted that this statement is binding on the Nathdwara Temple Board.

5. Mr.A.H.Mehta, on the other hand, appearing for the respondent no.1- Nathdwara Temple Board, supported the judgment of the learned District Judge in toto.

6. Perusing the record, it appears that there is a separate Samagri Fund Trust which is a trust registered at Bombay and Nathdwara Temple Board had never objected to the initiation of such a trust and its registration at Bombay. It appears that Samagri Fund Trust was the existing trust and that the said trust had considerable amount with them while the Nathdwara Temple Board had not objected to the same. It is not disputed that everywhere and especially at the temples governed by the Pushtimargiya Vallabh Sampradaya, the separate provisions for the 'Nek Bhog' is being made and that the managements of the temples are required to undergo a considerable amount of expenditure for various 'Puja' and ceremonies of the deity placed in the temples. The learned trial judge has observed in the judgment that the Pujari has to perform Mangal Arti, Bhog and Shayan Puja daily and Puja and rituals thereof are performed with great care, sanctity in the accepted formal manner. This procedure causes considerable expenditure to the temple management and, therefore, certain temples and especially the temples governed by the Pushtimargiyani Vallabh Sampradaya are having Samagri funds; these funds are formed as separate trusts and the management of these trusts is vested in the Board of Trustees who have nothing to do with the management of main trust; namely, the temple. In common parlance, these reserved funds are known as 'Amari Mudi', meaning thereby, that the principal amount is to be invested in certain securities and that the interest is to be utilised in the day to day expenses of the Puja of the deity in the temple. Therefore, it cannot be said that the principal trust eliminates the possibility of sub-trust. This would follow that at various temples, the Samagri fund is maintained and only because the Vaishnavas of Khambhalia had preferred to get the trust registered for the Samagri fund, it cannot be said that it would be derogatory to the main trust. Similarly, Nathdwara Temple Board would not object to having a separate fund for the Samagri because the interest which would be earned by the Samagri fund would be utilised by a committee for the puja etc. of the deity at the Bethak of Jam Khambhalia. Moreover, the Samagri fund is a public trust and the same has been registered at Bombay and that a Board of Trustees of certain persons is also appointed to look after the Samagri fund. Therefore, it was not necessary for the Nathdwara Temple Board to object to the initiating of such a Samagri fund. It is quite possible that the Tilkayat concerned or the Nathdwara Board may have felt that the management of the Samagri fund was completely safe in the hands of the trustees and, therefore also, they may not claim the management of the above said Samagri fund. Thus, merely

because Tilkayat concerned or the Nathdwara Board had not tried in past to gain control over the Samagri fund trust, it cannot be said that the affairs of the Khambhalia Bethak were also not being managed by the Tilkayat or the Board.

7. The learned trial judge, in para 15 of the judgment, referred to certain proceedings before the Supreme Court. He has stated that in respect of an appeal filed in the Supreme Court against the decision of the Special Civil Application No. 421 of 1960 decided by the High Court of Rajasthan, therein at page 858 in Volume No.3 at Annexure 49, there is a list of Bethaks which were handed over by the Tilkayat Govind Lalji to the Nathdwara Temple Board. In this list at Annexure 49, Bethak of Jam Khambhalia is also included. The same goes to show that the Bethak at Khambhalia was included from the beginning to the list submitted by Tilkayat Govind Lalji to the Board. From the said pronouncement of judgment by the Supreme Court in AIR 1963 SC 1963 in the matter of Tilkayat Govind Lalji Maharaj Vs. State of Rajasthan and ors., the respondents make it clear that after the Board had assumed the management of certain Bethaks, there were series of disputes between the parties and in Civil Appeals No. 652/ 653 and 752 of 1962, Tilkayat Shri Govind Lalji Maharaj and others were appellants while the State of Rajasthan and others were respondents. Similarly, in Civil Appeals No. 654, 655 of 1962, the position was vice versa i.e. the State of Rajasthan and others were appellants while Tilkayat Maharaj and others were respondents. From this position, it would follow that the statement of Tilkayat Govind Lalji Maharaj in the form of Annexure No. 49 cannot be said to be a statement of the Board. On the contrary, it follows that when the above said statement was made and the list was given, Tilkayat Govind Lalji Maharaj was claiming certain interest in respect of certain Bethak properties against the State of Rajasthan who was also claiming certain interest by way of provisions under the Rajasthan Nathdwara Temple Act (13 of 1959). Thus, it is clear that since the beginning, it was the say of Tilkayat Shri Govind Lalji Maharaj that the Bethak at Jam Khambhalia was his property and that he was the manager of the Trustee of the same.

8. In the instant case, the evidence of Kalulal has been recorded at Ex. 9 on 3.5.1967 and again on 19.8.1967. Kalulal who is the power of attorney of the executive officer of Nathdwara Temple Board, in his statement, has stated that a Golakh or a cash box is being maintained in the Bethak and that the amount

received by Golakh goes to their temple at Nathdwara at Rajasthan. He has also stated during his statement that the Golakh has been placed there at the instance of Shri Nathdwara at Rajasthan. He has stated that the accounts of the Golakh have not been audited by Nathdwara Temple Board and that the accounts are not published. He has stated that the Bethak at Khambhalia is open for Vaishnavas for Darshan and that it is a place of public worship. According to him, Vrajdas, the original Mukhiyaji died and thereafter his son has been appointed with his own consent.

The learned AGP Mr. Mehta submitted that as per the statement of Kalulal, their accounts have not been audited and published by the Board. He placed reliance on the statement of Kalulal that accounts have not been audited and published by the Board. Assuming that the statement of Kalulal with regard to the aforesaid fact is true, the persons who are liable for the same may be dealt with in accordance with law. Merely because the Board has not got the accounts audited and published, it cannot be accepted that the Board has nothing to do with the management of Bethak of Jam Khambhalia. In the statement dated 19.8.1967, Kalulal has stated that the names if the trustees given in the application at Ex. 1 are the trustees of the Samagri fund at Bombay. He has also further very clearly stated that he manages the affairs of Khambhalia Bethak as a representative of the Nathdwara Temple Board. He has further stated that Samagri fund is being managed by the trustees who reside at Bombay and that the same is registered at Bombay. He has also stated that he has been appointed by the Temple Board to manage the affairs of the properties and the Bethak situated in the areas known as Saurashtra and Kutch.

Reading these two statements of Kalulal together, it is clear that his say from the beginning was that he was the person responsible for the management of affairs of Jam Khambhalia Bethak and he has been the representative of the Board.

22.12.2000:

9. Similarly, Tapubhai whose statement is recorded at Ex. 12 dated 19.8.1967 has stated that at the relevant time, he was working as Accountant and that the vahivat of the Bethak was done by Vahivatdar Kalulal on behalf of Shri Nathji Temple Board at Shri Nathdwara. He has further stated that the Bethak is open to all the Vaishnavas for Darshan and the people come to the temple for having Darshan without any hindrance. Tapubhai has admitted that his role was restricted as a Manager of the

Samagri Fund and that the management of the Bethak was done by Kalulal who was the representative Shri Nathdwara Temple Board. Therefore, if the evidence of Tapubhai is read with the evidence of Kalulal, it is clear that right from the beginning, it is his case that he was managing the affairs of the Samagri Fund and he had nothing to do with the management of the Bethak which was being managed by Shri Nathdwara Temple Board.

10. Ex. 4 is the letter dated 27.5.1965 addressed by Mukhiyaji Vrajdas wherein he has clearly stated that the Bethak belongs to Shri Nathdwara Temple Board of Rajasthan and that Bhandari is one Kalulal who resides at Porbandar and the trustees of Samagri Fund reside at Bombay. Thus, from this letter, it is clear that Kalulal had clearly stated that the Bethak belongs to Shri Nathdwara Temple Board of Rajasthan. Even in Ex. 6 letter dated 17.4.1969 written by Kalulal, it is stated that Bethak of Jam Khambhalia is managed by Shri Nathdwara Temple Board and that at the instance of certain Vaishnavas of Khambhalia, he had submitted the application at Ex. 1. These documents clearly go to show that right from the beginning, as per the say of Mukhiyaji Vrajdas and other persons, the affairs of Khambhalia Bethak are managed by the Board and previously, the same were being managed by Tilkayatji and that the Samagri Fund is a distinct fund and a separate trust registered at Bombay.

11. From the oral as well as documentary evidence, it is clear that the Samagri Fund is altogether a different trust being managed by the trustees and which is registered at Bombay. The fact that the Tilkayatji or the Temple Board had not claimed the management of the abovesaid Samagri Fund would not be a circumstance to come to the conclusion that the Bethak of Jam Khambhalia was not being managed by the Tilkayatji or thereafter, by the Temple Board. Similarly, the statement of Tilkayatji Govind Lalji showing the Bethak of Jam Khambhalia as the Bethak managed by Tilkayatji is also not a statement made by the Board but on the contrary, it is a statement made by Tilkayatji Govind Lalji who was claiming adverse interest against the Board. In the same way, the evidence of Kalulal and Tapubhai clearly shows that the Bethak of Khambhalia was being managed by Kalulal as the representative of the Board at Nathdwara. It is also clear from the above evidence that monies of Golakh were received by Kalulal as the representative of the Board at Nathdwara. It is also established that the Vaishnavas of Jam Khambhalia had never urged before any authority whatsoever that the affairs of the Bethak are to be

managed and controlled under the provisions of the Bombay Public Trusts Act, 1950. On the contrary, according to their say, they had requested Tilkayatji for the appropriate management of the affairs of the Bethak at Jam Khambhalia. I, therefore, come to the conclusion that the Bethak at Jam Khambhalia was managed by Tilkayatji and thereafter the management of the same was vested in the Board under the provisions of Rajasthan Nathdwara Trust Act (Act No. 13 of 1959).

12. No other contentions are canvassed before me. In view of the above discussion, I am clearly of the opinion that the learned District Judge, Jamnagar was perfectly justified in allowing the application by setting aside the order passed by the Joint Charity Commissioner dated 8.12.1978 and the order dated 4.3.1978 passed by the Assistant Charity Commissioner, Rajkot. I, therefore, see no merits in this appeal and is dismissed. Considering the facts of the case, no order as to costs.

13. Before parting, I would like to make certain observations in the matter. Even though I have dismissed the appeal on merits on the basis of the evidence on record and even though I have held that the Bethak at Jam Khambhalia is being managed by the Board of Trustees of Shri Nathdwara Temple under the provisions of Nathdwara Trust Act, the said trust also receives monies of Golakh maintained at Bethak of Jam Khambhalia. Apart from the monies collected in Golakh, certain offerings are also being received at the Bethak at Jam Khambhalia from the worshippers. Even though the Board of Trustees is legally entitled to receive the monies and offerings, but in my personal opinion, the same are required to be utilised for the maintenance of the Bethak at Jam Khambhalia. If the Bethak at Jam Khambhalia is allowed to utilise the monies as well as offerings for its own purpose, they may not have to seek any monetary assistance from the Temple Board at Nathdwara. Since no assistance has been provided to me on my aforesaid thinking, I recommend the trustees/ administrators of the Temple Board at Nathdwara to take appropriate decision in the matter.

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